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DETERMINED BY

THE HIGH COURTS

AND BY

THE FEDERAL COURT

AND THE

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

WONG AH SING v. GOVERNMENT OF SINGAPORE & ORS.

[O.C.J. (Chua J.) June 5, 1967]
[Singapore — Suit No. 773 of 1966]

Damages — Personal injuries — Defendant servant of government — Defendants denying liability — Third defendant counterclaiming — Accord and satisfaction — Whether counterclaim had extinguished because of payment made by insurance company in another suit.

The plaintiff claimed damages for personal injuries suffered by him and caused by the third defendant the servant of the Government of Singapore. The second defendants were the Public Utilities Board. Both the first and second defendants denied that the third defendant was guilty of negligence and the third defendant counterclaimed damages against the plaintiff. The plaintiff in his defence to the counterclaim contended that the third defendant had accepted the sum of $5,000 from the Provincial Insurance Co. Ltd. in full and final payment of his claim in Suit No. 65 of 1966 and therefore the claim made in the counterclaim was extinguished.

Held: (1) on the evidence the probabilities are that the accident was caused solely by the negligence of the third defendant;

(2) by the transaction between the third defendant and the insurance company the claim of the third defendant against the plaintiff was absolutely extinguished and he cannot maintain his counterclaim;

(3) judgment for the plaintiff for the agreed sum of $4,000 and costs against the first and third defendants.

Case referred to:—

(1) *Hirachand Punamchand* v. *Temple* [1911] 2 K.B. 330.

CIVIL SUIT.

Denis Murphy for the plaintiff.

Wilfred Wee (State Counsel) for the 1st and 3rd defendants.

Cur. Adv. Vult.

Chua J.: The plaintiff in this case claims damages for personal injuries suffered by him and caused by the negligence of the third defendant, the servant of the 1st defendant, on the 25th May, 1965.

Both the first and third defendants deny that the third defendant was guilty of negligence and the third defendant counterclaims damages against the plaintiff for personal injuries suffered by him and caused by the negligence of the plaintiff in the riding of motor cycle No. SAE 5756 on the 25th May, 1965.

In the defence to counterclaim the plaintiff denies that the accident was caused by his negligence and paragraphs 4, 5 and 6 of the defence to counterclaim read:—

"4. In Suit No. 65 of 1966 the third defendant sued the plaintiff for the same claim as in the counterclaim herein. The plaintiff will at the trial of this action refer to the writ and statement of claim in the said Suit.

5. The Provincial Insurance Company Limited, the insurers of the said motor cycle No. SAE 5756, by exchange of letters between their solicitors Messrs. Rodyk & Davidson during the month of March 1966 with Messrs. P. T. Wong & Co., the solicitors for the plaintiff in said Suit (that is the third defendant herein) agreed to settle the claim in the said Suit for the sum of $5,000 and $350 costs and the said insurance company subsequently paid the said sum of costs to the said Messrs. P. T. Wong & Co. acting for and on behalf of the third defendant, and through the Public Trustee paid the said sum of $5,000 to the third defendant who accepted it on the terms of a discharge voucher which he then signed whereby he accepted the said sum in full and final payment of his said claim. The plaintiff will refer at the trial of this action to the said letters and the said discharge voucher for their full terms, true meaning and effect.

6. The plaintiff says that by reason of the facts stated in paragraphs 5 and 6 hereof the claim now again made in the counterclaim was extinguished or alternatively by reason of the said facts the third defendant is precluded from maintaining the counterclaim herein as this would be a fraud on the said insurance company."

No reply was filed by the defendants to the defence to counterclaim of the plaintiff.

I will now deal with the evidence adduced relating to the accident.

The plaintiff's evidence was shortly this:

On the 25th May, 1965, he was riding motor cycle No. SAE 5756 along Kim Keat Road in the direction of Balestier Road. His speed was 25 m.p.h. There was a bend in the road by a Chinese temple. He rounded the bend and he saw a refuse wagon on his right which was either stationary or moving very slowly coming in the opposite direction. He approached the wagon on his side of the road and as he passed the front of the wagon he suddenly saw a person running from behind the wagon across the road about 10 ft. in front of him. He applied his brakes but did not attempt to swerve. He hit the person. He fell down from his motor cycle and he did not remember anything more. He was taken to hospital. He sustained personal injuries.

The plaintiff called corporal 644, Abdul Rahim bin Enduit, of the Traffic Police to give evidence. The corporal visited the scene of the accident and took measurements and later drew a sketch plan showing the position where he found the motor cycle lying on its near side and a scratch mark on the road caused by the motor cycle. The motor cycle was lying across the centre white line and the scratch mark was 17 ft. 7" long running parallel to the centre white line and 2 ft. 4" to the left of the centre white line when one faces the direction of Balestier Road.

The third defendant's evidence was shortly this: On the day in question he was a member of a refuse wagon crew engaged in emptying the dustbins in Kim Keat Road. The wagon was moving very slowly on the left hand side of the road going towards Kim Keat Avenue. He and one Lakshmanan carried a dustbin from the side of the road, where the wagon was, to the back of the wagon and handed it to two labourers who were on the back of the wagon. Lakshmanan then left the wagon while he remained there to get back the dustbin. He was directly behind the wagon, a little distance away, and following the slowly moving wagon. While he was there he was knocked down by a motor cycle and he sustained injuries to his right leg. He did not see the motor cycle at all and he did not know from where it came.

Chua Thup Teck the mandore of the wagon crew gave evidence to this effect. The labourers were collecting the dustbins from one side of the road only, the side where the wagon was. The wagon had stopped opposite a Chinese temple. He was near the near-side rear wheel of the wagon when he heard a noise. He thought a dustbin had dropped. He turned round and he saw the third defendant and a motor-cycle lying on the road. He did not see the motor cycle rider. The third defendant was lying 8 ft. behind the wagon and parallel to the centre white line, 1 to 2 ft. away from it on the side where the wagon was. The motor cycle was lying 20 ft. behind the wagon and on the centre white line. He did not see the accident.

The driver of the wagon, A. Nagar, was also called by the defendants to give evidence. He, however, did not see the accident nor did he see the motor cycle before the accident. He said that his wagon was stationary at the time of the accident, opposite the Chinese temple, and it was about 1 ft. from the edge of the road. The wagon was a big one — 24 ft. long and about 7 ft. 5" wide.

So much for the evidence.

If the story of the third defendant is true then the plaintiff must have gone to the wrong side of the road to knock down the third defendant. Counsel for the defendants submitted that that was what happened. However, the third defendant in his pleadings in this suit and in Suit No. 65 of 1966 made no allegation that the plaintiff went to the wrong side of the road. Nor did the third defendant allege this in his report made to the police after the accident. In fact in his statement of claim in Suit No. 65 of 1966 he alleged that he was run into from the rear and knocked down by the plaintiff's motor cycle.

On the other hand the plaintiff has maintained the same story all along. In his report to the police he said that the third defendant ran towards the centre of the road from behind the wagon.

After a careful consideration of the evidence I have come to the view that the probabilities are that this accident happened in the way described by the plaintiff and I have come to the conclusion that this accident was caused solely by the negligence of the third defendant.

I now come to deal with the question of the counterclaim of the third defendant. It is not disputed that the counterclaim of the third defendant is the same as his claim in Suit No. 65 of 1966 in which he sued the plaintiff for damages for the same injuries. It is also not disputed that he received from the Provincial Insurance Co., the insurers of the plaintiff, the sum of $5,000 in April, 1966, and signed a discharge voucher which was in this form:—

"I, GANESAN S/O SELLIAH of No. 265, Upper Weld Road, Singapore, hereby acknowledge receipt of the sum of dollars five thousand ($5,000) only paid to me by the Provincial Insurance Company Limited in full and final payment of all claims of whatever kind including damages for personal injuries sustained by me that I might have against the said Provincial Insurance Company Limited or their insured rider WONG AH SING rode motor-cycle No. SAE 5756 as a result of an accident at Kim Keat Road, Singapore, involving motor-cycle No. SAE 5756 and myself on the 25th day of May, 1965.

I hereby agree to indemnify and keep indemnified the said Provincial Insurance Company Limited against all and any claim whatsoever made or to be made by

any person or persons on my behalf in respect of the said accident.

It is understood and agreed that the payment herein is made without admission of liability."

It is also not disputed that the insurance company paid to the solicitors of the third defendant $350 costs.

It is perfectly clear that the third defendant has settled his claim in Suit No. 65 of 1966 and has accepted the sum of $5,000 from the insurance company in full and final settlement of his claim against the plaintiff. Those being the facts the question now is how they affect the counterclaim of the third defendant in this suit. I am of the view that by that transaction between the third defendant and the insurance company the claim of the third defendant against the plaintiff was absolutely extinguished. (See the case of *Hirachand Punamchand* v. *Temple.*[1] Therefore the third defendant cannot maintain his counterclaim.

In the result there must be judgment for the plaintiff. Damages have been agreed at $4,000. There will be judgment for the plaintiff in the sum of $4,000 and costs against the first and third defendants and the counterclaim of the third defendant is dismissed with costs.

Judgment for the plaintiff.

Counterclaim dismissed.

Solicitors: *Murphy & Dunbar.*

FATIMAH v. MOIDEEN KUTTY

[O.C.J. (Ali J.) June 25, 1967]

[Muar — Civil Appeal No. 5 of 1966]

Land — Temporary occupation licence — Legal incidence resulting from death of T.O.L. holder with regard to arrears of rent accrued due before death and arrears accruing after death — Whether legal representative has right to distrain in respect of arrears of rent.

The appellant as administratrix of the estate of a deceased, applied to a magistrate for a warrant of distress for eight months rent alleged as owing by a tenant of the deceased in respect of temporary structures built on State land held under Temporary Occupation Licence No. 284 A/60 issued to the deceased. The appellant maintained as widow and administratrix she had the right to distrain for non-payment of rent.

The respondent paid the rent of $320 plus costs to the bailiff as claimed under protest, to avoid seizure, and issued a notice of objection contesting the issue on various grounds. At the hearing of the objection and arguments of counsel, the magistrate in effect discharge the warrant of distress. On appeal,

Held: the temporary occupation licence terminated with the death of holder and whatever rights the deceased had over the land they did not pass on his intestacy. Accordingly the appellant, as representative, did not at the material time have any right to distrain the respondent's property.

Cases referred to:—

(1) *Tay Cheo* v. *Chow Ngia* [1967] 1 M.L.J. 281.

(2) *Papoo* v. *Veeriah* [1965] 1 M.L.J. 127.

(3) *Govindaraju* v. *Krishnan* [1962] M.L.J. 334.

(4) *Hee Cheng* v. *Krishnan* [1955] M.L.J. 103.

MAGISTRATE'S CIVIL APPEAL.

D. A. Devadason for the appellant.

W. H. Sault for the respondent.

Cur. Adv. Vult.

Ali J.: The appellant as administratrix of the estate and effects of P. Kunjahamad, deceased, applied to the magistrate, Batu Pahat, for a warrant of distress under section 5(1) of the Distress Ordinance No. 28 of 1951. The application, which was made *ex parte,* was approved by the magistrate, Inche Abdul Rahman, on the 21st March, 1965. The appellant's claim was for the sum of $320 being arrears of rent for 8 months in respect of premises Nos. 16 and 17, Jalan Ismail, Senggarang, Batu Pahat.

On the 24th March, 1965, the bailiff of the court went to the premises to execute the warrant. But on the respondent paying the sum of $320 plus a further sum of $22 as costs the bailiff did not execute the warrant. The respondent paid this amount under protest indicating that he would object to the distress. The money was consequently deposited in court to abide the result of the respondent's objection. By a notice of objection dated 29th May, 1965, the respondent called upon the appellant to release the money from deposit within 3 days after service. In support of this objection the respondent filed an affidavit in which he claimed ownership to the premises in question. He stated that the premises were built by the deceased, P. Kunjahamad, and that he occupied them as a tenant paying a monthly rent of $40 to the deceased. He further stated that the premises were built on State land in respect of which temporary occupation licence No. 284A/60 was issued to the deceased, P. Kunjahamad, as holder. His claim to ownership was founded on the fact that he had carried out extensive repairs on the premises which cost him $2,425.35. He added that he had been prosecuted, convicted and fined $30 in the magistrate's court, Batu Pahat, on 7th January, 1964, for reconstructing the houses. It was, however, not apparent from his affidavit what his real contention in law was. The appellant, on the other hand, also filed an affidavit in which she maintained that as the two premises in question formed part of the estate of the deceased, P. Kunjahamad, she, as his widow and administratrix, was entitled to distrain the respondent's property for non-payment of rent. She, however, admitted that the two houses were built on State land held under T.O.L. No. 284A/60 issued to the deceased.